IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL(L) NO.495 OF 2003

The Commissioner of Income Tax ..Appellant

Vs.

M/s.RDI Print & Publishing Pvt.Ltd. ..Respondent

Mr.Ashok Kotangale, A.G.P. with Mr.P.S.Sahadevan for
the Appellant.
Mr.P.J.Pardiwalla with Ms.Rushvi N.Shah
i/b.M.S.Bodhanwalla & Co. for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN &
V.C.DAGA, JJ.

DATE : 16TH APRIL, 2007

P.C.

1. Heard the learned Counsel for the parties. In the present Appeal, the following substantial question of law is sought to be raised:

> "Whether the litigation expenses incurred by the assessee for saving the assets and investment of subsidiary company M/s.Samrat holding Pvt.Ltd. is allowable as Business Expenditure of the assessee under Section 37 of the Income Tax Act when both the companies i.e. Subsidiary as well as holding company are Separate and distinct Legal entities under Income Tax Law?"
>
> If the answer is in affirmative "Whether the litigation expenses incurred in the earlier years by the subsidiary company which has been reimbursed by the holding company in the current assessment year will entitle the holding company as allowable business expenditure under Section 37 of the Income Tax Act in the current assessment year ?"

2. We have perused the order passed by the Tribunal, wherein it is observed that:

> It was due to the litigation and in consequence of the Order passed by the Company Law Board that the shares allotted by the management were cancelled and the assessee company once again got the controlling rights of its subsidiary company. In these facts we hold, that the litigation expenses are attributable to both i.e. rivalry between the two groups of share holders to gain control and management of the company as well as to safeguard the interest of the assessee company. Both these two being inter-dependent on each other and there being no definite formula to bifurcate the litigation expenses pertaining to rivalry of the two groups of shareholders and the expenses pertaining to safeguard the interest of the company, we consider it reasonable to allow 50% of these litigation expenses as pertaining to having incurred to safeguard the interest of the assessee company and accordingly allowed as a deduction in the hands of the assessee and the disallowance of the balance 50% of the litigation expenses are confirmed and accordingly the ground of Appeal of the assessee is partly allowed.

3. In view thereof, no substantial question of law is involved in the present matter, the same is only a finding of fact. Accordingly, the Appeal stands dismissed.

(V.C.DAGA,J.) **(DR.S.RADHAKRISHNAN,J.)**